



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004

Agency Website: www.nlr.gov
Telephone: (602)640-2160
Fax: (602)640-2178

October 3, 2019

Mr. Richard Santiago
5334 Pistolera Circle
Las Vegas, NV 89120-2039

Re: United States Postal Service
Case 28-CA-175106

Dear Mr. Santiago:

I am sending you this letter to provide you with the basis of my Compliance Determination to approve the Compliance Stipulation executed by the United States Postal Service (Respondent) in the above-captioned case. The following summary is provided setting forth the basis of my Compliance Determination to approve the Compliance Stipulation. A copy of the Compliance Stipulation is enclosed.

If you disagree with the Compliance Determination set forth in this letter, you have the right, pursuant to Section 102.53 of the Board's Rules and Regulations, to appeal my Determination initially to the General Counsel and subsequently to the Board. The appeal procedure is detailed further near the end of this document

The Board Order: The Board, in its July 17, 2018, Decision and Order, found that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by maintaining certain rules. The Board ordered Respondent to take the following affirmative actions as part of the remedy for these unfair labor practices:

- (a) Within 14 days from the date of the Board's Order, rescind the following rules in its Handbook AS-805, 5-5 Prohibited Uses of Information Resources:

Generally prohibited activities when using information resources include, but are not limited to, the following:

- (i) Disclosing any Postal Service information that is not otherwise public without authorized management approval.

- (ii) Performing any act that may discredit, defame, libel, abuse, embarrass, tarnish, present a bad image of, or portray in false light the Postal Service, its personnel, business partners, or customers.
- (b) Within 14 days from the date of the Board's Order, rescind the following rule in its Employee and Labor Relations Manual (ELM):

ELM Section 665.3 – Cooperation in Investigations

Employees must cooperate in any postal investigation, including Office of Inspector General investigations.

- (c) Within 14 days from the date of the Board's Order, rescind the following rule in its Nevada-Sierra District Employee conduct Policy Letter – Re-Issue subjecting employees to discipline, including removal, for “[f]ailure to cooperate in, or the impeding of, any Postal inspection or investigation,” and remove from its bulletin boards throughout its Nevada-Sierra District postings that memorialize either of those rules.
- (d) Within 14 days after service by the Region, post at its facilities nationwide copies of the [notice attached to the Decision] marked “Appendix A” and copies of the [notice attached to the Decision] marked “Appendix B” at its facilities within its Nevada-Sierra district. Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, postal-vision, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has closed certain facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 28, 2015.

- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

The Compliance Investigation: Following the issuance of the Board's Decision and Order, this office engaged in negotiations with Respondent over the manner in which Respondent would comply with the above affirmative provisions in light of its contractual and collective-bargaining obligations with the unions that represent its employees.

At the conclusion of these negotiations, Respondent signed the enclosed Compliance Stipulation, in which it agreed that, to comply with the above affirmative provisions, it will, if it has not already done so:

- a. Within fourteen (14) days from the approval of this Compliance Stipulation, remove the rules described above in paragraph 2(a) from its Handbook AS-805, 5-5 Prohibited Uses of Information Resources.
- b. Within fourteen (14) days from the approval of this Compliance Stipulation, distribute to managers at its facilities nationwide, a clarifying memorandum, setting forth, in part:

As you are aware. Employee and Labor Relations Manual (ELM), Section 665.3, Cooperation in Investigations, requires that employees cooperate in any postal investigation, including Office of Inspector General investigations. However, discussions with employees concerning unfair labor practice charges filed with the National Labor Relations Board (NLRB) are not governed by the provisions of ELM 665.3.

Generally, management personnel should not question bargaining unit employees about unfair labor practice charges. Insofar as this type of questioning may occur, it must be conducted under the following guidelines:

Before an employee is questioned about unfair labor practice charges, management must first advise the employee of the purpose of the questioning and inform the employee that the decision whether to

participate in the discussion, and any information related to the unfair labor practice charge provided during the discussion, will not be subject to retaliation.

- c. Within fourteen (14) days from the approval of this Compliance Stipulation, rescind the rule from its Nevada-Sierra District Employee Conduct Policy Letter – Re-Issue subjecting employees to discipline, including removal, for “[f]ailure to cooperate in, or the impeding of, any Postal inspection or investigation” by removing postings of this rule from its facilities throughout its Nevada-Sierra District.
- d. Within 14 days after service by the Region, post at its facilities nationwide copies of the notice attached to the Decision marked “Appendix A” and copies of the notice attached to the Decision marked “Appendix B” at its facilities within its Nevada-Sierra district. Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by Respondent’s authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, postal-vision, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has closed certain facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 28, 2015.
- e. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Per the terms of the Compliance Stipulation, upon performance by Respondent of the obligations set forth above, Respondent shall be deemed in full compliance with the above affirmative provisions.

I have determined that the undertakings described in the Compliance Stipulation fulfill the purposes of the affirmative relief ordered by the Board. Specifically, the Compliance Stipulation provides for rescission of the rules at issue or clarification of the rules so that they no longer interfere with the rights of employees under Section 7 of the Act, and it provides for posting of a notice to employees and certification of compliance.

Although, since April 8, 2019, on several occasions, this Office has transmitted the Compliance Stipulation to you and solicited you to sign it, to date, you have not signed the Compliance Stipulation or communicated any objection to its approval.

Because the undertakings described in the Compliance Stipulation fulfill the purposes of the affirmative relief ordered by the Board and you have not communicated any objection to my approval of the Compliance Stipulation, I have decided to approve it.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 16, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a

delivery service no later than October 15, 2019. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 16, 2019.** The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 16, 2019, **even if it is postmarked or given to the delivery service before the due date.** Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Cornele A. Overstreet

Cornele A. Overstreet
Regional Director

Enclosure: Form NLRB-5434

cc: See next page.

cc: Roderick D. Eves, Attorney at Law
Dallas G. Kingsbury, Attorney at Law
Julie A. Hellerud, Paralegal Specialist
United States Postal Service
(Law Department - NLRB Unit)
1720 Market Street, Room 2400
St. Louis, MO 63155-9948

Alexander T. MacDonald, Attorney at Law
United States Postal Service
(Office of the General Counsel,
Employment Law)
475 L'Enfant Plaza SW
Washington, DC 20260-1101

United States Postal Service
1001 East Sunset Road
Las Vegas, NV 89199

National Association of Letter Carriers, Branch
2502, AFL-CIO, CLC
2620 East Sunset Road, Suite D
Las Vegas, NV 89120-3527

CAO/BLJ/tmr

Form NLRB-5434
(2/11/2011)

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

APPEAL FORM

TO: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the compliance determination of the Regional Director in:

Case Name (s)

Case No.

(If more than one case number, include all case numbers in which an appeal is taken).

(Signature)

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

UNITED STATES POSTAL SERVICE

and

Case 28-CA-175106

RICHARD SANTIAGO, an Individual

COMPLIANCE STIPULATION

1. On July 17, 2018, the National Labor Relations Board (the Board) issued an Order (the Board Order) adopting the Administrative Law Judge's decision, JD(SF)-07-18, in the above-captioned case (the Decision), which found that the United States Postal Service (Respondent) engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. In affirming the Decision, the Board directed Respondent to take the following affirmative actions:

- (a) Within 14 days from the date of the Board's Order, rescind the following rules in its Handbook AS-805, 5-5 Prohibited Uses of Information Resources:

Generally prohibited activities when using information resources include, but are not limited to, the following:

- (i) Disclosing any Postal Service information that is not otherwise public without authorized management approval.
- (ii) Performing any act that may discredit, defame, libel, abuse, embarrass, tarnish, present a bad image of, or portray in false light the Postal Service, its personnel, business partners, or customers.

- (b) Within 14 days from the date of the Board's Order, rescind the following rule in its Employee and Labor Relations Manual (ELM):

ELM Section 665.3 – Cooperation in Investigations

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- (c) Within 14 days from the date of the Board's Order, rescind the following rule in its Nevada-Sierra District Employee conduct Policy Letter – Re-Issue subjecting employees to discipline, including removal, for “[f]ailure to

cooperate in, or the impeding of, any Postal inspection or investigation,” and remove from its bulletin boards throughout its Nevada-Sierra District postings that memorialize either of those rules.

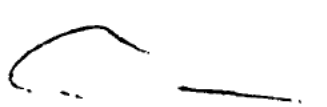
- (d) Within 14 days after service by the Region, post at its facilities nationwide copies of the [notice attached to the Decision] marked “Appendix A” and copies of the [notice attached to the Decision] marked “Appendix B” at its facilities within its Nevada-Sierra district. Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by Respondent’s authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, postal-vision, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has closed certain facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 28, 2015.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned that, to comply with the affirmative provisions of the Board Order described above, Respondent will, if it has not already done so:

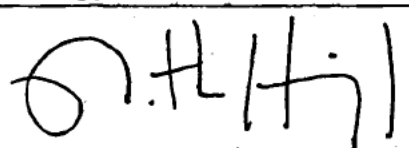
- a. Within fourteen (14) days from the approval of this Compliance Stipulation, remove the rules described above in paragraph 2(a) from its Handbook AS-805, 5-5 Prohibited Uses of Information Resources.
- b. Within fourteen (14) days from the approval of this Compliance Stipulation, distribute to managers at its facilities nationwide, a clarifying memorandum, setting forth, in part:


As you are aware. Employee and Labor Relations Manual (ELM), Section 665.3, Cooperation in Investigations, requires that employees cooperate in any postal investigation, including Office of Inspector General investigations. However, discussions with employees concerning unfair labor practice charges filed with the National Labor Relations Board (NLRB) are not governed by the provisions of ELM 665.3.

All parties agree that, upon performance by Respondent of the obligations set forth above, Respondent shall be deemed in full compliance with the affirmative provisions of the Board's Order.

Respondent:	
	4/3/19
Roderick Eves, Deputy Managing Counsel United States Postal Service	Date

Charging Party:	
Richard Santiago, an Individual	Date

Approval Recommended:	
	8/16/19
Nathan A. Higley, Field Attorney National Labor Relations Board, Region 28	Date

Approved:	
	10/8/19
Cornele A. Overstreet, Regional Director National Labor Relations Board, Region 28	Date

Generally, management personnel should not question bargaining unit employees about unfair labor practice charges. Insofar as this type of questioning may occur, it must be conducted under the following guidelines:

Before an employee is questioned about unfair labor practice charges, management must first advise the employee of the purpose of the questioning and inform the employee that the decision whether to participate in the discussion, and any information related to the unfair labor practice charge provided during the discussion, will not be subject to retaliation.

- c. Within fourteen (14) days from the approval of this Compliance Stipulation, rescind the rule from its Nevada-Sierra District Employee Conduct Policy Letter – Re-Issue subjecting employees to discipline, including removal, for “[f]ailure to cooperate in, or the impeding of, any Postal inspection or investigation” by removing postings of this rule from its facilities throughout its Nevada-Sierra District.
- d. Within 14 days after service by the Region, post at its facilities nationwide copies of the notice attached to the Decision marked “Appendix A” and copies of the notice attached to the Decision marked “Appendix B” at its facilities within its Nevada-Sierra district. Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by Respondent’s authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, postal-vision, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has closed certain facilities involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since October 28, 2015.
- e. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.